IN THE COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1316 OF 2006

Shri Kishorekant Khimchand Shah ...Petitioners

vs.

Meghdoot Co-op Hsg.Soc.Ltd and Ors. ...Respondents

Shri Pravin Patel i/by.Pradip Shukla & Co.
for the petitioners.

P.S.Dani for Respondent nos.2 to 8.

M.H.Solkar, AGP for Respondent no.10.

CORAM: S.C.DHARMADHIKARI, J.

DATE ; 23RD FEBRUARY, 2007.

P.C :-

1. Heard.

2. Perused the order passed by the Member Maharashtra State Co-operative Appellate Court,

Mumbai on 21.1.2006 dismissing the Revision Application which was directed against the order passed by the Trial Court framing the issue of limitation as a preliminary issue.

3. I am informed by the Learned Counsel appearing for both sides, that the issue as to whether the dispute is within limitation has already been tried as a preliminary issue, in as much as, the evidence has been led by the parties and the matter is at the stage of arguments. In the light of this position, no useful purpose will be served by going into the rival submissions and the challenge to the impugned order. The challenge arises because of the grievance of the Petitioner Original Disputant that the issue of limitation could not have been tried as a preliminary Issue. Now, that the issue has been tried already and the matter is at the stage of arguments, in my view, the petition has become infructuous.

4. Needless to state, that the Petitioner would be at liberty to challenge the finding of the Trial

Court on the preliminary issue, if the same is adverse to the Petitioner. While challenging the same, it would be open for the petitioner to urge that the issue could not have been tried as a preliminary issue and all contentions of both sides in that behalf, are expressly kept open. Petition dismissed as infructuous.

sd/-

(S.C.DHARMADHIKARI, J)